purchase rubber and when inspite of that the vendor proceeded to sell rubber to the partnership he could be said to be *delicto.* In *Archbold's* case the point was made "that the Plaintiffs did not know that the vehicle on which the goods were placed for carriage held only a 'C' licence, *nor did they deliberately shut their eyes to the matter.*" (The emphasis is mine).

In my judgment the defendants' attempt to avoid their liabilities on the basis of illegality also fails.

Accordingly the Plaintiffs in each of the actions are entitled to specific performance, alternatively to an award for damages.

Now one of the conditions imposed in the issue document of titles is that the buildings to be built on the lots should be built within two years of the imposition of the condition. Nothing having been done to the land all these years I can see various difficulties in the Defendants completing the development of the sub-lots. In all the circumstances the justice of the case calls for an order that the Defendant in each of the cases pays the respective Plaintiffs damages to be assessed after I hear evidence and argument in respect thereof.

There will be an order in those terms. The Plaintiff in each case will also be entitled to the costs of this action. The question of interest will be decided after I hear further argument.

Order accordingly.

Solicitors: *H.Y. Lee & Hee; K.Y. Foo & Co.*

RETHNASAMY v. TEOH NGOO MOOI & ANOR.

[A.C.J. (Edgar Joseph Jr. J.) December 2 & 6, 1982]

[Penang – Civil Appeal No. 33 of 1979]

Landlord and Tenant – Claim for possession – House built on land belonging to landlord – Ownership of house – Admission of oral evidence as to contents of written tenancy agreement – Whether tenancy determined on death of former landlord – Equitable estoppel – Whether notice to quit effective to terminate tenancy.

This was an appeal from the decision of the learned magistrate who had given vacant possession of the land on which stood a house to the respondents. The appellant had originally rented the land from one Veerappen, since deceased, and he had built the dwelling house on the land with the consent of Veerappen. The appellants who had also occupied part of the land, had bought the whole of the land from Veerappan. The respondents issued a notice to quit dated May 14, 1974 requiring the appellant to vacate the land on or before May 30, 1974. The statement of claim alleged that there was an agreement in writing between Veerappen and one Subramaniam, the brother of the appellant, whereby the land was leased for three years. At the end of this period the appellant who was living with Subramaniam refused to quit the premises. In his defence the appellant contended that the previous landowner had told him he could stay on the land forever if he paid the rent. He stated he had expended various sums in erecting and maintaining the house and he further pleaded that his tenancy had not been duly determined. At the trial before the learned magistrate oral evidence was allowed to be given of the alleged written agreement. The learned magistrate *inter alia* held that as the previous landlord had died the lease agreement and whatever interest or right created was duly determined.

Held: (1) the learned magistrate should not have permitted the respondents to lead oral evidence as to the contents of the written tenancy agreement;

(2) the learned magistrate was wrong in holding that upon the death of Veerappen, the lease had been determined;

(3) the learned magistrate should have considered whether his claim that he was allowed to stay on the land forever raised a protection in equity;

(4) the notice given by the respondents was bad in law and there was no proof of the determination of the appellant's contractual tenancy.

Cases referred to:

(1) *Chua Sai Ngoh* v. *Beh Ai Meng* [1955] M.L.J. 167.
(2) *Yong Tong Hong* v. *Siew Soon Wah & Ors.* [1971] 2 M.L.J. 105.
(3) *Doe d. Groves* v. *Groves* (1847) 10 Q.B. 486; 116 E.R. 185.
(4) *Smith* v. *Seghill Overseers* (1875) L.R. 10 Q.B. 422, 429.
(5) *Guan Soon Tin Mining Co.* v. *Ampany Estate Ltd.* [1973] 1 M.L.J. 25,29.
(6) *Doe d. Lyster* v. *Goldwin* (1841) 2 Q.B. 143; 114 E.R. 57.
(7) *London County Council* v. *Agricultural Food Products* [1955] 2 Q.B. 218.
(8) *London County Council* v. *Farren* (1956) 1 W.L.R. 1297.
(9) *Sidebotham* v. *Holland* [1895] 1 Q.B. 378.
(10) *Crate* v. *Miller* [1947] 2 All E.R. 45.

CIVIL APPEAL.

V. Sithambaram for the appellant.
Ariffin Daud for the respondent.

Cur. Adv. Vult.

Edgar Joseph Jr.: This is an appeal from the decision of the learned magistrate, Nibong Tebal,

giving vacant possession of certain land comprised in P.T. No. 22, Mukim 7, Province Wellesley South, on which stood a cement floored, plank walled and zinc roofed dwelling house, not subject to the Control of Rent Act, 1966, in favour of the respondents, the registered proprietors and against the appellant, the occupier thereof.

It was common ground that the dwelling house was constructed by the appellant with the consent of the predecessor in title of the respondents, one Veerappen, since deceased, who received ground rent at the rate of $5 p.m., pursuant to the provisions of a tenancy agreement in writing dated January 8, 1965, (not produced at the trial). At that time, until their purchase of the land on June 11, 1974, the respondents occupied part of it as ground tenants of Veerappen, thereafter of course they continued to do so as landlords by purchase.

A preliminary point is worth mentioning and this concerns the ownership of the house which in my view was inseparable from the ownership of the land on which it stood and still stands (see the decision of Thomson, J. (as he then was) in *Chua Sai Ngoh* v. *Beh Ai Meng*[1]). This was overlooked all round in the court below.

I now turn to the pleadings.

According to the statement of claim, by an agreement in writing dated January 8, 1965, entered into by Veerappen, as owner of the land and one Subramaniam s/o Muniandy, the appellant's brother, as tenant, the latter was given a lease of three years of the land at a ground rent of $5 p.m. Upon expiry of the period of this tenancy, there was no renewal thereof and the appellant, who apparently lived on the land with Subramaniam, failed or refused to vacate the said land and, as a result, the respondents caused his solicitors to issue and to serve a notice to quit dated May 14, 1974, being exhibit P2, requiring the appellant to vacate the land on or before May 30, 1974. Thereafter, according to the respondents, the appellant occupied the land as a trespasser.

By his defence, the appellant contended that he was not a party to the tenancy agreement aforesaid and consequently, the respondents had no *locus standi* to sue him. In the alternative, the appellant contended that he had acquired a tenancy coupled with an equity and was therefore entitled to compensation as various sums of money had been expended by him towards the erection and subsequent repairs of the dwelling house, maintenance of a road, a foot-path, a drain and other amenities for the common use of all occupants on the said land. The appellant further pleaded that his tenancy had not been duly determined according to law and that the notice to quit, P2, was bad since no compensation had been paid.

I now turn to the evidence.

The respondents' version in court was, however, not altogether consistent with their statement of claim. It would appear that they purchased the land from Veerappen on June 11, 1975 as evidenced by the issue document of title, P1. Since some years prior to the purchase, the respondents and the appellant lived on the land, but it was the appellant, not his brother Subramaniam, who entered into the tenancy agreement dated January 8, 1965 with Veerappen for a period of three years and built a dwelling house thereon, with the latter's consent. After expiry of the agreement, Veerappen died and no fresh agreement was executed. Upon their instructions, their then solicitors, Messrs. V. Veerappen & Co., caused the notice to quit, P2, to be sent to the appellant to yield vacant possession of the land on or before May 30, 1975. The appellant having refused to vacate, the respondents caused a summons to be issued and served upon the appellants.

I have already mentioned that the tenancy agreement dated January 8, 1965 was never produced at the trial though the respondents were represented and when I queried their counsel, Encik Ariffin, who also appeared for them in the court below, as to this, he explained that this was because he only had a photostatic copy. My response to counsel was that if this had been the case, the photostatic copy could have been admitted as secondary evidence upon compliance with the conditions laid down in section 65 of the Evidence Act, 1950. Counsel said he had overlooked this.

Be that as it may, the appellant, who was unrepresented at the trial, gave evidence to the effect that he built a house on the land at a cost of $6,500, with the consent of Veerappen who was then the owner and that it was his brother Subramaniam who entered into the agreement dated January 8, 1965 with Veerappen for three years. However, after the expiry of the tenancy,

he continued to pay the rental of $5 p.m. until the year 1975, to Veerappen who promised that he could stay there forever. Four members of his family, including Subramaniam, have lived and are living with him in the house. The appellant also said that Veerappen offered to sell him the land but the respondents who also lived on the land wanted compensation, so he declined the offer. Instead, the respondents purchased it and now required him to vacate.

Before I proceed to consider the judgment of the learned magistrate, I might as well mention that at the trial the appellant's counsel did not appear (the appellant having had no prior notice of this) and when the time came for the first respondent to be cross-examined, the appellant expressed doubts about his ability to do so, adding, "that was why I want to engage a counsel". And still later, when the time came for submissions, the appellant said, "because my counsel – not here – I can't give my submissions." In view of this, the magistrate should have asked the appellant if he was prepared to proceed with the case and if the appellant had replied in the negative, which was most probable, he should have asked counsel for the respondents if he had any objection.

Before me, Encik Ariffin has frankly said that had he been consulted he would have readily consented to a short adjournment, and had the magistrate done so, it seems likely that the case would have been postponed, with a suitable order as to costs, to enable the appellant to be represented, at least for purposes of submissions. Had this been done, as it undoubtedly should have, the appellant's case would perhaps have been adequately presented and the relevant authorities cited (as this was a case which involved some law) ending, perhaps, I venture to suggest, in a different result.

I now turn to consider the judgment of the learned magistrate. He found that "since the former landlord (Mr. Veerappen) had passed away the lease agreement and whatever interest or right created was duly determined. On the death of Veerappen there was no one in whom the tenancy could vest – and that consequently, this tenancy came to an end on the death of Veerappen" (p. 16 paragraph 3). He added that that being the case, the appellant was not in a position to demand a lawful notice to quit to determine his tenancy as his lease had already been determined (p. 16) and there being no fresh agreement executed by the appellant and the respondents after Veerappen had died, the appellant became a trespasser once the notice to quit dated May 14, 1974 was sent to him.

With all due respect to the learned magistrate, his reasoning appears to me to be faulty and his conclusion wrong.

In the first place, the learned magistrate should not have permitted the respondents to lead oral evidence as to the contents of the written tenancy agreement dated January 8, 1965 in breach of the explicit provisions of sections 91 and 144 of the Evidence Act, 1950, there being no evidence to satisfactorily account for its non-production. The written agreement was important since it constituted one of the main planks in the statement of claim wherein it was expressly referred to and relied upon. In the second place, the magistrate was wrong in holding, as he did in fact hold, that upon the death of Veerappen, the lease had determined. He was however right when he held, earlier on in his judgment (p. 12), that the respondent bought the land subject to the appellant's tenancy. In the third place, he should have, but did not, go on to consider the appellant's all important claim, which incidentally was neither challenged nor contradicted, that "my previous land owner said that I can stay there forever and each month I paid $5 to him" (p. 6 towards the end of paragraph 2 of the judgment). This omission was important because there is authority for saying that a tenancy for as long as the tenant wishes to occupy where the tenant has expended money on the land of another in the expectation of being allowed to remain in occupation qualifies for protection in Equity and will be treated as a lease for as long as the law allows, in other words, as a lease for thirty years which of course is the maximum term for a lease of alienated land allowed under section 221(3)(b) of the National Land Code: *Yong Tong Hong* v. *Siew Soon Wah & Ors.*[2]. In the fourth place, there was, *prima facie*, an ambiguity in the evidence, as to who was the respondents' tenant of the land, namely, was it the appellant or his brother Subramaniam, and if the latter, the magistrate should have considered the question, whether or not Subramaniam should have been made a co-defendant in these proceedings.

Having regard to the omissions and misdirections which vitiated the decision of the magistrate, I would ordinarily have ordered a retrial before another magistrate to enable the issues I have mentioned to be regularly and properly

tried with liberty to join Subramaniam as a co-defendant, and liberty to the appellant to file a counterclaim for a declaration that he be entitled until the expiry of thirty years from date of commencement of his tenancy to remain in peaceful possession of the land for this period so long as he pays the rent agreed and a consequential order that the respondents do execute a lease in due form. However, as declaratory relief and an order for specific performance are not within the jurisdiction of the Subordinate Court, an order for transfer of the proceedings to the High Court could be sought and no doubt obtained.

Nevertheless, for reasons which I shall presently mention, an order for retrial would not be appropriate. The magistrate having found that the respondents bought the land subject to the appellant's tenancy and that from 1968 until 1975, the appellant still paid the ground rental of $5 p.m. it was essential for the respondents to determine his tenancy according to law before commencing ejectment proceedings. In this context, I find the submission by counsel for the respondents that the appellant occupied the land as a tenant at will quite untenable, regard being had to this finding by the learned magistrate against which there has been no cross-appeal by the respondents. Moreover, the acceptance of rent by the respondent from the appellant is wholly inconsistent with the concept of a tenancy at will: *Doe d. Groves* v. *Groves*[3]; *Smith* v. *Seghill Overseers*[4]. Nor do I consider the admission made by the appellant in cross-examination that he occupied the land as a licensee of any assistance to the respondents. Whether or not the appellant was a tenant or a licensee is a question of law and an admission made by mistake, particularly by a party appearing in person, concerning such a matter is no admission at all. In any event, if a party makes a mistake as to his legal position a court of law is in no way bound by it. As Ong C.J. said in *Guan Soon Tin Mining Co.* v. *Ampang Estate Ltd.*[5]:

"I do not think this letter written by laymen having no knowledge of the law should be read as an unconditional admission binding on them regardless of their mistaken view of the law. If they were in error, their error cannot oblige the court to follow their view."

I shall next return to the point that it was essential for the respondents to prove a determination of the appellant's contractual tenancy prior to commencing ejectment proceedings which they sought to do by the letter, P2, which was unsigned and unauthenticated though it bore the letterhead of the legal firm of Messrs. V. Veerappen & Co.

At common law there is no strict requirement that a notice to quit should be signed and, unlike in England where there is a statutory requirement for this under section 25 of the Landlord and Tenant Act, 1954, we have none in this country. However, a notice to quit must be so authenticated that the addressee can safely rely on it (*Doe d. Lyster* v. *Goldwyn*)[6] and this is best done by signature. Just to show how far the authorities go, I would add that the person placing his signature on the notice should have been duly authorised to do so: *London County Council* v. *Agricultural Food Products*[7]; *London County Council* v. *Farren*[8].

In my opinion, P2 was not a valid notice to quit because it was not expressed to expire at the end of a complete period of the tenancy and was not equal to the length of that period. Or, to put it another way, the notice was not expressed to expire either on the anniversary of a complete period of the tenancy or on the day before the anniversary of such period. We are here concerned with a monthly tenancy since rent was paid by reference to the month. P2 stipulates that the appellant is required to demolish and remove the premises from the land on or before May 30, 1975. The month of May has, of course, 31 days, and as a result the period of notice was insufficient by one day. It should have been expressed to expire either on May 31, 1975 or on June 1, 1975 (*Sidebotham* v. *Holland*[9]; *Crate* v. *Miller*[10]). Alternatively, if one goes by the terms of the tenancy agreement dated January 8, 1965 the notice, P2, should have been expressed to expire on January 7, 1975 or January 8, 1975 so that the period mentioned therein was too long. On either view, therefore, the notice, P2, was bad in law.

There is a further ground also for holding that there was no proof of due determination of the appellant's contractual tenancy even if the notice, P2, were on the face of it good. The statement of claim which did not allege the due determination of the contractual tenancy stated that it was served on May 14, 1974. By his defence the appellant contended that the tenancy had not been determined in accordance with the law and there was the usual general traverse that unless admitted each and every allegation in the statement of claim was denied. The first respondent did say in

examination-in-chief that on May 14, 1974, his lawyers sent a notice to the appellant (P4) but sending is not the same as serving and though the appellant did in cross-examination admit he was given the notice, P2, he did not say when this was.

The learned magistrate should accordingly have dismissed the respondent's claim for possession on the ground that a condition precedent for the institution of ejection proceedings against the appellant had not been fulfilled, namely, the determination of his tenancy according to law. The appeal is accordingly allowed with costs both here and in the court below, the possession order is set aside and there will be an order for refund of the deposit for security for costs to the appellant.

Before departing, I should perhaps add that in view of the ground on which the appeal has been allowed, the respondents are, of course, at liberty, should they so wish, to institute fresh proceedings for ejectment after properly determining the appellant's tenancy according to law, in which case, I would venture to suggest that the guidance as to the steps to be taken by the parties which I have indicated earlier on in this judgment may perhaps be worth considering.

Appeal allowed.

Solicitors: *Kumar & Co.; Ariffin & Co.*

CHENG HAY GUN & ORS. v. PERUMAHAN FARLIM (PG.) SDN. BHD. & ANOR.

[O.C.J. (Mustapha Hussain J.) July 21, August 27, September 29 & 30; December 16, 1982]

[Penang – Civil Suit No. 311 of 1982]

Landlord and Tenant – Tenancy of land used as vegetable plots – Tenancy terminated by notice to quit – Whether developers can be stopped by injunction from entering vegetable plots to begin their development works – Whether vegetable plots premises within meaning of Control of Rent Act – Control of Rent Act, 1966, s. 2.

In this case the landlords of two big pieces of land in Penang engaged the defendants to develop the land. The acreage of the land was over 400 acres and on the lands were about 500 houses. The owners of these houses were ground tenants of the landlords paying ground rentals. Some of the five hundred tenants (including the plaintiffs) also rented out portions of the land adjacent to or near their houses to cultivate vegetable and fruit trees and paid separate rentals. The landlords had agreed to a scheme of compensation for the tenants which had been accepted by some of the tenants and rejected by others including the plaintiffs. The plaintiffs applied for an injunction to stop the defendants from trespassing, encroaching, or interfering with the tenancy of both the premises, that is the houses where the plaintiffs were staying and of the vegetable lots. In regard to the houses defendant's counsel undertook not to disturb the quiet occupation of the houses by the plaintiffs and the court only dealt with the question of the vegetable lots.

Held: (1) the vegetable lands in this case are not within the definition of "premises" to attract the protection of the Control of Rent Act 1966 and the landlords can terminate the tenancy;

(2) the plaintiffs have not succeeded in establishing claims for an injunction in respect of the vegetable lands such as to succeed for a permanent injunction at the trial; nor have the plaintiffs established a legal right to their claim recognisable by the court to grant an injunction;

(3) what the plaintiffs have is only an equity to the said vegetable land and this can be adequately compensated by damages.

Cases referred to:

(1) *Lewis* v. *Purvis* 177 L.T. 267.
(2) *Lister* v. *Pickford* [1861-1873] All E.R. Rep. 374.
(3) *Trim* v. *Sturminster Rural District Council* [1938] 2 K.B. 508.
(4) *Application des Gaz S.A.* v. *Falks Veritas Ltd.* [1974] Ch. 381.
(5) *London and Blackwall Ry.* v. *Cross* (1886) 31 Ch. D. 354, 369.
(6) *Khew Ah Bah* v. *Hong Ah Mye* [1971] 2 M.L.J. 86.
(7) *Gouriet* v. *Union of Post Office Workers* [1977] 3 W.L.R. 300; [1978] A.C. 435.
(8) *Corporation of Birmingham* v. *Allen* (1877) 6 Ch. D. 284.
(9) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] A.C. 396.

CIVIL SUIT.

Tan Khek Pheng for the plaintiffs.

M. Shankar (*J.A. Yeoh* with him) for the defendants.

Cur. Adv. Vult.

Note: Four other Civil Suits, viz., C.S. 312/82, C.S. 313/82, C.S. 317/82 and C.S. 341/82, were also heard on the same date separately. In these four cases the plaintiffs are tenants and the law applicable is the same as in the instant case. Though the defendants' counsel applied to be joined together, the plaintiffs' counsel indicated that since the facts are not the same, they would like to make the application and submissions separately. Hence, these five applications were heard separately, though C.S. 313/82 and C.S. 317/82 were heard jointly. All these cases were heard and disposed of on the same day.